

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA  
HONORABLE CORMAC J. CARNEY, JUDGE PRESIDING

UNITED STATES OF AMERICA, )  
 )  
 PLAINTIFF, )  
 )  
 vs. ) SACR NO. 17-00103-CJC  
 )  
 JOSEPH MARTIN GOVEY, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SANTA ANA, CALIFORNIA

WEDNESDAY, DECEMBER 27, 2017

9:00 A.M.

DEBORAH D. PARKER, CSR 10342  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT  
411 WEST FOURTH STREET  
SUITE 1-053  
SANTA ANA, CALIFORNIA 92701  
(657) 229-4305  
transcripts@ddparker.com

DEBORAH D. PARKER, U.S. COURT REPORTER

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF, UNITED STATES OF AMERICA:

ANDRE BIROTTE, JR.  
UNITED STATES ATTORNEY

DENNISE D. WILLETT  
ASSISTANT UNITED STATES ATTORNEY  
CHIEF, CRIMINAL DIVISION

BRADLEY E. MARRETT  
ASSISTANT UNITED STATES ATTORNEY  
UNITED STATES DISTRICT COURT  
8000 RONALD REAGAN FEDERAL BUILDING  
SANTA ANA, CALIFORNIA 92701  
(714) 338-3500

FOR THE DEFENDANT, JOSEPH MARTIN GOVEY:

TIMOTHY A. SCOTT  
SCOTT TRIAL LAWYERS APC  
1350 COLUMBIA STREET  
SUITE 600  
SAN DIEGO, CALIFORNIA 92101  
(619) 794-0451

1           **SANTA ANA, CALIFORNIA; WEDNESDAY, DECEMBER 27, 2017;**

2                           **9:06 A.M.**

3                   THE COURT: Good morning.

4                   THE CLERK: Calling Calendar Item No. 1,

09:06:29 5           SACR 17-00103-CJC, United States of America versus Joseph  
6           Martin Govey.

7                   Counsel, your appearances, please.

8                   MR. MARRETT: Good morning. Bradley Marrett, on  
9           behalf of the United States.

09:06:35 10           THE COURT: Good morning, Mr. Marrett.

11                   MR. SCOTT: Good morning, Your Honor.

12                   Tim Scott for Mr. Govey. He's present before the  
13           Court out of custody -- I mean, in custody. Excuse me.

14                   THE COURT: Good morning, gentlemen.

09:06:45 15           MS. MARTINEZ: Good morning, Your Honor.

16                   Marina Martinez with Pretrial Services.

17                   THE COURT: Good morning. Thank you for being  
18           here. While there were a few things that I wanted to  
19           address today, but first up is the motion, Mr. Scott, that  
09:06:57 20           you filed for bail. I passed out a tentative. Hopefully,  
21           you've had a chance to review it.

22                   Is there anything you would like to argue to  
23           convince me I'm wrong?

24                   MR. SCOTT: No thank you, Your Honor.

09:07:11 25           We've set forth everything as best we could in our

09:07:14 1 briefing. I have received and reviewed the Court's  
2 tentative, and I'm prepared to submit on the issue at this  
3 point.

4 THE COURT: Mr. Marrett, anything further?

09:07:24 5 MR. MARRETT: Nothing further from the Government.

6 THE COURT: Okay. And Ms. Martinez, from  
7 Pretrial, I did receive your letter also recommending  
8 detention, but I don't know if there's anything you would  
9 like to add.

09:07:38 10 MS. MARTINEZ: No further information was received  
11 at this time.

12 THE COURT: Well, unless you would like to stay,  
13 Ms. Martinez, the other items I need to discuss with the  
14 lawyers deal with some pretrial motions and the trial.

09:07:50 15 You're free to leave, if you would like.

16 MS. MARTINEZ: If I may stay, I would like to.

17 THE COURT: You may.

18 MS. MARTINEZ: Thank you.

19 THE COURT: Okay.

09:08:01 20 Then, I will make the tentative order the final  
21 order of the Court. What I'd like to discuss is the  
22 pretrial motions. We discussed them when we were here last,  
23 but I did not make final rulings on the record, so I need to  
24 do that. What I'd like to do is just summarize again my  
09:08:25 25 findings on the three motions that were before me and then

09:08:31 1 give a chance for anybody to give comments for the record.

2           The Government's motion to preclude extrinsic  
3 facts relating to the Orange County Sheriff's Department  
4 Inmate Informant scandal and defendant's dismissed 2012  
09:08:51 5 state case, I'm inclined to deny that motion. I believe the  
6 informant scandal is relevant to proving Deputy Larson's  
7 motive/bias and character for truthfulness or  
8 untruthfulness. I'm also aware that Deputy Larson was a key  
9 witness in the scandal and in the subsequent criminal case  
09:09:13 10 asserted his Fifth Amendment and refused to testify  
11 regarding the scandal and the truthfulness of his testimony  
12 in the earlier criminal case where the intentional  
13 misconduct was discovered.

14           We had spoken earlier about whether Deputy Larson  
09:09:34 15 would assert his Fifth Amendment rights. And Mr. Marrett,  
16 you indicated to me you spoke to him very briefly. He did  
17 not have the opportunity to consult with counsel, but he had  
18 indicated that he intended to testify and not assert his  
19 Fifth Amendment rights. I don't know if there's been any  
09:09:57 20 change to that, but I would like to get an update from you  
21 on that.

22           The other Government motion was regarding  
23 Mr. Govey's priors -- convictions and other acts, and my  
24 inclination is to grant that motion. The evidence regarding  
09:10:21 25 Mr. Govey's possession of altered Federal Reserve notes in

09:10:25 1 July and August of 2017 is relevant to proving a common plan  
2 or scheme to alter reserve notes from \$1 to \$100 -- his  
3 knowledge of how to do it and his intent to do it. It is  
4 not unfairly prejudicial because the evidence will not  
09:10:40 5 confuse or mislead the jury, nor will it take much time to  
6 present. It is also not inflammatory in nature, nor will it  
7 extract the jury from considering all the evidence that's  
8 presented at trial.

9 Finally, I will give a jury instruction that  
09:11:00 10 limits how they can consider this evidence and,  
11 specifically, not to consider it for improper character  
12 purposes.

13 Similarly, evidence regarding Mr. Govey's prior  
14 drug convictions and possession of meth in August 2017 is  
09:11:18 15 also relevant to proving his knowledge and intent to possess  
16 and traffic in drugs. It is not unfairly prejudicial  
17 evidence, because it will not confuse or mislead the jury.  
18 It will not take much time to present. It is not  
19 inflammatory, nor will it distract the jury from considering  
09:11:37 20 all the evidence presented at trial. And, again, I will  
21 give the jury a limiting instruction to make sure the jury  
22 does not consider the evidence for improper character  
23 purposes.

24 The next motion -- I think there's four motions  
09:11:54 25 before me now. This is the defense motion to sever. I'm

09:11:59 1 inclined to deny that motion. There's a substantial overlap  
2 in the Government's evidence for both the drug and  
3 counterfeiting counts. Those counts arise out of the same  
4 search of the same bedroom at the same time by the same  
09:12:14 5 deputies. And even the counterfeiting evidence found in  
6 Mr. Govey's wallet is relevant to proving his knowledge and  
7 control over the drug and counterfeiting evidence seized in  
8 the bedroom.

9 Severing the trials would cause duplication of  
09:12:29 10 effort, unnecessary waste of resources and burden on jurors,  
11 nor do I see any unfair prejudice to the defense. The  
12 counterfeiting count is straightforward and not complicated  
13 factually or legally, and I don't see any basis for why more  
14 time is needed to prepare for these counts. But I'll keep  
09:12:49 15 an open mind, Mr. Scott, if you feel that more time is  
16 needed for the defense to prepare for both of these counts.

17 The motion to compel discovery, I don't know  
18 whether I'm granting it in part or denying it without  
19 prejudice. As I indicated before, I do believe that this  
09:13:15 20 information is very relevant and I do intend to allow the  
21 defense leeway into raising the informant scandal. We're  
22 going to have an evidentiary hearing, though, so to make  
23 sure that Deputy Larson is going to testify and not assert  
24 his Fifth Amendment rights and then if there's some fair way  
09:13:42 25 to both sides that I could limit the scope of the

09:13:44 1 cross-examination but, certainly, some evidence is going to  
2 come in.

3 The reason why I said I don't know if I'm denying  
4 it without prejudice, is because I'm not in a position, nor  
09:13:58 5 do I feel it would be appropriate for me to micromanage the  
6 Government's discovery obligations under *Brady*, *Giglio* and  
7 *Henthorn*, and I have no idea what discovery has been  
8 produced, or what has been, or will be. So I'm going to  
9 really need lawyers to guide me through this. But out of an  
09:14:20 10 abundance of caution, I would want the Government to give a  
11 robust production of all relevant information from that.

12 Those are the motions. Mr. Marrett, do you want  
13 to be heard on them?

14 MR. MARRETT: Just briefly, Your Honor.

09:14:39 15 The first motion -- and I suppose it relates to  
16 the fourth motion as well, the -- and I know the Court is  
17 familiar with the Dekraai history and background and  
18 everything. There's one thing that I do want to make sure  
19 that the Court is aware of, if it's not already, and that's,  
09:14:58 20 there are two Deputy Larsons that worked for the Orange  
21 County Sheriff's Department. There was a Deputy Jonathan  
22 Larson whose testimony was involved in the actual *Dekraai*  
23 case. And my understanding is his testimony is what  
24 revealed or shed light on the existence of these thread  
09:15:19 25 reports and was in conflict with the testimony that other

09:15:24 1 deputies, such as Deputy Tunstall, had given at the Dekraai  
2 evidentiary hearings over the course of that proceeding.

3 The deputy that is involved in this case is Deputy  
4 Bryan Larson. My understanding is that Deputy Bryan Larson  
09:15:39 5 didn't testify in the *Dekraai* case with the evidentiary  
6 hearings. He was later called, as the Court pointed out, as  
7 a witness in a separate criminal proceeding on a motion for  
8 a new trial in the *Ortiz* case, in front of Judge King and  
9 during that hearing did invoke the Fifth Amendment on advice  
09:15:59 10 of counsel.

11 My -- as we discussed at the last hearing, my  
12 understanding is that Deputy Larson will not be taking the  
13 Fifth in this case. That hasn't changed so far; if it does,  
14 I will, you know, advise the Court of that, or I'm sure it  
09:16:17 15 will come to light during the evidentiary hearing.

16 There's also something I wanted to point out for  
17 the Court as well that Deputy Bryan Larson did testify in  
18 the *Ojeda* case that was in front of Judge Selna, and that  
19 was after he had invoked -- my understanding, after he  
09:16:33 20 invoked in the state case. He was able to testify  
21 successfully in the *Ojeda* case and be subject to  
22 cross-examination and didn't invoke there. So I suspect  
23 that would result and be the same here. He'll be able to  
24 testify successfully without invoking. Again, if that  
09:16:52 25 changes, I'll let the Court know. I just wanted to make the

09:16:55 1 Court aware of the fact that there were two Deputy Larsons  
2 that worked for the sheriff's department at that same time.

3 THE COURT: I wasn't aware of that, and I  
4 appreciate you letting me know that. But I guess I'm still  
09:17:06 5 a little confused about the chronology.

6 Judge Selna made his ruling early on when  
7 Judge Goethals had just made a negligence finding. And then  
8 there were further proceedings and then he found willful  
9 intentional misconduct. And what you're telling me is that  
09:17:35 10 Deputy Larson invoked his Fifth Amendment rights before the  
11 intentional findings and before Judge Selna had ruled?

12 MR. MARRETT: So -- I think there's maybe two  
13 separate things here: One, my understanding is -- and this  
14 is my understanding from reading Judge Selna's prior  
09:18:00 15 ruling -- is that at the time Judge Selna made his ruling  
16 there had already been misconduct findings by  
17 Judge Goethals, because -- and the reason that that's my  
18 understanding --

19 THE COURT: But it was negligence.

09:18:12 20 MR. MARRETT: I could be mistaken, Your Honor, but  
21 I believe there were credibility findings that had been made  
22 at that time and findings that they had engaged in  
23 misconduct.

24 And -- because in Judge Selna's ruling is the  
09:18:24 25 references to the underlying misconduct were going to be

09:18:28 1 allowed at trial but not some of the other surrounding  
2 circumstances around everything else that was going on in  
3 the Dekraai proceedings. After those rulings had happened,  
4 there was a trial in Ojeda. And during that trial,  
09:18:48 5 Deputy Bryan Larson testified and my understanding testified  
6 successfully without invoking.

7 THE COURT: But my understanding is, at some later  
8 point after Judge Selna's trial, the hearings got more  
9 intense and more serious and then there were actual findings  
09:19:15 10 by Judge Goethals of intentional misconduct, not only by the  
11 sheriffs but by the DA's office. And based on those  
12 findings, actually removed the DA from prosecuting the  
13 Dekraai case and the attorney general had to step in.

14 MR. MARRETT: And -- Your Honor, I don't have the  
09:19:37 15 chronology right in front of me to say for certain exactly  
16 when those -- I know the DA's findings were later on. But I  
17 think at least as to Deputy Tunstall and one of the other  
18 deputies, I think those misconduct findings were made  
19 earlier on.

09:19:53 20 THE COURT: We don't want to be litigating the  
21 procedural history and debating it. I get that. The reason  
22 why I'm trying to understand the chronology, though, is when  
23 specifically Deputy Larson assert his rights, and I thought  
24 it was later in the process. I thought it was in 2015 that  
09:20:20 25 he asserted his Fifth Amendment rights. And that was later

09:20:24 1 in the stage when it was getting very serious before  
2 Judge Goethals. I don't know whether it was before he  
3 removed them from -- removed the D.A.'s office from  
4 prosecuting the case or not. I don't know. But I think  
09:20:50 5 what I'm trying to get at is, Deputy Larson asserted his  
6 Fifth Amendment rights after -- wasn't it after Judge Selna  
7 made his finding and he testified in that case or not?

8 MR. MARRETT: I'm not certain on the chronology.

9 My understanding is that he had testified in  
09:21:21 10 Judge Selna's trial after the invocation in the state  
11 proceedings, but I'm not certain of that. I can check on  
12 that. That's something that we can discuss or, perhaps, I  
13 can brief it in advance of the evidentiary hearing for the  
14 Court.

09:21:36 15 THE COURT: Yes, you may want to. Because, I  
16 mean, if Judge Selna gave him an indication that you weren't  
17 going to be cross-examined on it, then I guess I can  
18 conceptually, putting aside whether that was right or wrong  
19 thing to do -- but I, conceptually, could understand why he  
09:21:57 20 says, *Okay, I'll testify.*

21 Do you see where I'm getting at? Whereas, in this  
22 case -- I've indicated and I'm not going to change my  
23 mind -- some inquiry is going to be allowed and he needs to  
24 know that, if I'm making sense.

09:22:14 25 MR. MARRETT: No, I understand what the Court is

09:22:15 1 saying. And I think, you know, my discussion with  
2 Deputy Larson has been that everything would be on the table  
3 effectively -- for his preparation or understanding about  
4 whether he may or may not invoke, that everything may be on  
09:22:28 5 the table for the evidentiary hearing, or -- and, perhaps,  
6 trial, depending on whether we can set limits or constraints  
7 around the scope of cross-examination.

8 But even given that, my understanding is that he  
9 does not intend at least, presently, to invoke during the  
09:22:45 10 testimony of this case.

11 MR. SCOTT: Can I -- according to the Orange  
12 County Register, I'm looking at an article that's dated  
13 January 5th, 2016, reporting on what at that time -- so this  
14 is January 2016 -- was the recent invocation of four Orange  
09:23:05 15 County Sheriff deputies, including Deputy Larson. And for  
16 what it's worth, the answer -- the question that provoked  
17 the invocation was: *Are you presently employed by the*  
18 *Orange County Sheriff's Department?*

19 *I invoke my Fifth Amendment rights.*

09:23:23 20 So we know that in front of Judge King, it was  
21 early 2016 or very late 2015 at the very earliest. So we  
22 can compare that to what -- you know, when he testified,  
23 quote, unquote, successfully in front of Judge Selna.

24 THE COURT: Right. If it's not obvious why I'm so  
09:23:44 25 concerned about this is because I don't want the situation

09:23:48 1 where he's unfairly taken advantage of. I have an  
2 obligation to protect Mr. Govey's rights, and I have an  
3 obligation to protect Deputy Larson's rights, and I take  
4 both of those obligations very seriously. So he needs to be  
09:24:06 5 advised by counsel. And I believe we have appointed counsel  
6 to talk to him about this.

7 Melissa has indicated --

8 Do we know who that counsel is?

9 Kate Corrigan has been appointed to confer with  
09:24:19 10 him. She's quite knowledgeable of events in Orange County,  
11 so he's got competent counsel. That gives me some comfort.  
12 And maybe at some point both you and Mr. Scott need to  
13 contact her and get a sense of where we're going from here.

14 But as I understand it -- and I don't know whether  
09:24:46 15 you can speak to this or whether it's appropriate for you to  
16 speak to it, but I understand the fed's still investigating  
17 that whole informant scandal. And it's part of, I believe,  
18 a criminal or at least a civil investigation. And so I  
19 think you're in an awkward position of the right arm is  
09:25:14 20 investigating and Deputy Larson is going to be a witness and  
21 the left arm is, he's your witness in this case. So I don't  
22 know how you're going to walk the -- that ethical minefield,  
23 and I don't mean to suggest how you walk it. All I'm saying  
24 is, I got to make sure that he has been adequately advised  
09:25:46 25 of his rights and potential to incriminate himself.

09:25:52 1 And the fact that we appointed Kate Corrigan, I  
2 have some comfort, but you need to be aware that of what  
3 these issues are, right?

09:26:05 4 MR. MARRETT: Sure. And I recognize it's a  
5 challenge for me, Your Honor. And we take seriously all the  
6 parties' rights involved as well. So I think we'll be able  
7 to manage that. But if there comes a point where we can't,  
8 then maybe there's a different conversation that we have.  
9 But at this point I believe that we will be able to manage  
09:26:22 10 that.

11 THE COURT: Okay. All right. Obviously Kate  
12 Corrigan will be here on the 23rd, but I would ask that you  
13 and Mr. Scott contact her before then to get an update.  
14 Because that hearing, it's going to go very differently if  
09:26:46 15 he invokes, as opposed to, *No, I'm going to testify*. Again,  
16 if he decides to testify, my objective of that hearing is  
17 not to do a complete script of what his examination is at  
18 trial. It's to try to get -- if I can get a better sense  
19 of, is there some way how we can limit this so we don't turn  
09:27:09 20 this trial into the informant scandal. But at the same  
21 time, give Mr. Govey and Mr. Scott full opportunity to  
22 cross-examine as his credibility as a witness, whether that  
23 be character for truthfulness or untruthfulness or, as  
24 Mr. Scott has indicated, he intends to present motive/bias  
09:27:35 25 evidence.

09:27:37 1 Okay.

2 MR. MARRETT: So other than that, I don't have  
3 anything to add, Your Honor. I just wanted to discuss the  
4 two Larsons issues. Unless the Court has questions, I'm  
09:27:47 5 prepared to submit on the --

6 THE COURT: Would you give me -- today is the  
7 27th. Would you give me a report -- a joint report on --  
8 after Ms. Corrigan has had an adequate opportunity to  
9 consult with Deputy Larson on how he intends to proceed?

09:28:11 10 MR. MARRETT: Sure, we can do that. When would  
11 you like that by, Your Honor?

12 THE COURT: Let's see. Could you give it to me  
13 the week of January 8th? If you need more days in the week,  
14 that's fine. But get it in by January 12th.

09:28:34 15 MR. MARRETT: Yes, Your Honor.

16 THE COURT: Okay. Mr. Scott, the motions, is  
17 there anything you would like to add, including on this one  
18 dealing with Deputy Larson?

19 MR. SCOTT: No, thank you, on Deputy Larson. I  
09:28:49 20 sort of interjected to add my two cents on that already.

21 With the Court's permission, I would like to speak  
22 to the 404(b) issue.

23 THE COURT: You may.

24 MR. SCOTT: And, candidly, I had -- I was  
09:29:00 25 intending to respond orally to the Government's *in limis* --

09:29:14 1 (Court Reporter requests clarification for the  
2 record.)

3 MR. SCOTT: -- *in lims* -- motions *in limine* at the  
4 last hearing. So I -- and I should have done it in writing.  
09:29:19 5 But sort of in the flurry of these things last minute, I  
6 didn't do so yet.

7 So if I can say my piece on that, quickly. The  
8 three convictions -- well, I should back up and start by  
9 saying, on the counterfeit -- the possession of dummy bills  
09:29:38 10 or blanks of actual counterfeit notes later, I think fair is  
11 fair. And, quite candidly, I'd submit on that issue, and I  
12 don't have a great deal to say on that portion of it.

13 I do think the convictions for narcotics-type  
14 offenses are a different matter entirely, though. And so --  
09:29:57 15 so while I submit on the counterfeit, I do object and hope  
16 to persuade the Court that we should revisit the prior  
17 convictions.

18 As I understand it from pages 3 and 4 of the  
19 Government's motions to admit, there are three drug  
09:30:14 20 convictions that the Government is looking to put before the  
21 jury in its case-in-chief: A 1996 conviction for possession  
22 of a controlled substance for sale and transportation of  
23 methamphetamine; a 2007 conviction for simple possession of  
24 methamphetamine and a 2011 conviction for sale and  
09:30:36 25 transportation of heroin.

09:30:38 1 So to take each in order, the 1996 offense is more  
2 than 10 years -- more than 10 years old and predates the  
3 instant offense by a substantial period of time. It does  
4 appear at least by the -- by the conviction to be similar,  
09:30:59 5 but the factual similarity is something that I think is  
6 still very much in question. And so, the argument or the  
7 proposition I would state to the Court is that under -- and  
8 I'm not, of course, presuming to tell the Court the law but  
9 just making my record on my understanding of the law -- is  
09:31:15 10 that 404(b) as opposed to 609 is key to and is determined by  
11 the factual similarity. It's a rule of facts rather than  
12 just the legal significance of a conviction, of course. And  
13 so the factual similarity I would suggest hasn't been  
14 determined. You know, was Mr. Govey convicted of having,  
09:31:40 15 you know, several kilos in duffel bags in the trunk of a  
16 car? If so, that seems to be quite different than having a  
17 smallish baggie of methamphetamine in one's bedrooms.

18 Was he out on the street corner, you know,  
19 scoring; and then, giving a little bit, you know, to the  
09:31:59 20 middleman? Or was this, you know, a different conviction  
21 where he was -- you know, had a certain amount in the place  
22 where he was staying? Did that case have scales and  
23 individual baggies, or did it not as in this case?

24 And regardless the fact that it is so old, I think  
09:32:16 25 cuts very much against a 404(b) analysis.

09:32:20 1 As to the April 2007 conviction, that is from what  
2 I can see here simply a simple possession conviction. And  
3 as I stated to the Court at the last hearing and I'll state  
4 it again, because I want to make sure that Mr. Govey is here  
09:32:35 5 so that he can correct me if I'm wrong, my understanding is  
6 that this -- this trial isn't going to be about whether or  
7 not those drugs were found and were in Mr. Govey's  
8 constructive possession or actual possession. The question  
9 is going to be: Is this a distribution case?

09:32:53 10 THE COURT: Or personal use.

11 MR. SCOTT: Versus personal use.

12 So my suggestion is that a personal-use case from  
13 2007 doesn't move the ball on whether or not this is a  
14 distribution case here today in 2017. It's also 10 years  
09:33:09 15 old, but it also just doesn't go to the facts that are in  
16 dispute here.

17 And, finally, as to January 2011, we have the sale  
18 and transportation of heroin. And so while at least  
19 ostensibly that's a -- or on its face that is a narcotics  
09:33:29 20 offense, it's not -- it doesn't seem to have that factual  
21 similarity to what's at issue here. And I know that the  
22 Government cited one case -- I believe it's called *Rubio*  
23 *Villarreal* -- for the proposition that the drug doesn't have  
24 to be the same to pass muster under 404(b). I would point  
09:33:53 25 out that in that case, I believe, it was a border bus case.

09:33:56 1 And so, you know, whether you're driving across  
2 the San Ysidro port of entry with, you know, cocaine in the  
3 gas tank versus driving across San Ysidro port of entry  
4 with, you know, methamphetamine in the gas tank, I think a  
09:34:08 5 fair argument could be made especially under an abuse of  
6 discretion standard that those were, in fact, factually  
7 similar. Again, the Government hasn't contributed anything  
8 to the factual matrix that I think we're supposed to analyze  
9 here to determine is that heroin situation factually  
09:34:24 10 analogous to what's going on here.

11 And if we don't do those -- that factual analysis,  
12 what we're left with is, he was convicted for possession  
13 with intent to distribute before, so that's pretty good  
14 evidence that he was intending to distribute here today.  
09:34:42 15 And we often describe character evidence. Well, this  
16 doesn't go to his character. It's not saying he's a bad  
17 person is often the way that the Government argues this.  
18 But that, frankly, isn't the question. The question is  
19 propensity. The biggest concern and hurdle is: He did it  
09:35:00 20 before. He probably did it this time. I mean, that's  
21 propensity evidence at its very core. And I think that  
22 unless there's some factual similarities that we can point  
23 to, well, this is -- this is, you know, his idiosyncratic  
24 manner of doing this, for example, would be a very good  
09:35:18 25 example. Or, you know, he pled guilty to a very similar

09:35:23 1 amount of methamphetamine under very factual circumstances,  
2 that does cut against the argument that this is personal  
3 use. Absent something like that, it's just plain propensity  
4 evidence and I do think that that violates 404(a).

09:35:38 5 So thank you very much for letting me say my piece  
6 on that.

7 THE COURT: Well, you have me thinking. Your  
8 statement of the law is my understanding of the law, so I  
9 agree with you that when you're talking about 404(b), the  
09:35:50 10 more similarity, I guess it's -- it's more probative than --  
11 and I do have concerns, and I had concerns about the  
12 possession conviction, but I felt, given it was around the  
13 same time in connection with the others, it was relevant and  
14 arguably showed knowledge and intent that Mr. Govey knows  
09:36:22 15 what methamphetamine looks like. It's not baby powder or  
16 some legal drug.

17 Mr. Marrett, why don't you respond to that and,  
18 particularly, do you have the information about these  
19 priors -- the facts and circumstances, so I can make an  
09:36:45 20 informed decision on how similar they are?

21 MR. MARRETT: So -- as far as the specific facts  
22 and circumstances go, Your Honor, I'm in the process of  
23 collecting the police reports from those underlying  
24 offenses, especially the older offenses. We have to go to  
09:36:58 25 archives to get that information, and I don't have it yet.

09:37:02 1 So I can provide that to the Court and provide further  
2 details to the Court as to why -- I think these are relevant  
3 and admissible other acts that can be admitted at trial.

4 The only other point that I wanted to touch on is  
09:37:19 5 even though the defense has suggested that maybe they won't  
6 be disputing knowledge or possession at trial, it's still an  
7 element that the Government has to prove beyond a reasonable  
8 doubt. And so, his knowledge of what methamphetamine is and  
9 that it's not something like baby powder, it's still  
09:37:39 10 something the Government has to prove beyond a reasonable  
11 doubt, so I don't think that that, even if they're not  
12 really challenging it, changes the analysis for the Court  
13 and the admissibility of the evidence.

14 THE COURT: All right. Well, what I guess I would  
09:37:56 15 like to do then is I would like supplemental briefing on  
16 this motion. And I think we've now at least teed it up more  
17 accurately and more precisely -- and I would like a very  
18 clear statement from the Government what 404(b) categories  
19 that these prior convictions would fall under.

09:38:24 20 I'm going to stick with my tentative on the  
21 counterfeiting evidence; but on the drug evidence, I'd like  
22 further briefing and then we can talk about this in  
23 connection with the hearing on Deputy Larson.

24 MR. SCOTT: I was just going to say, Your Honor,  
09:38:43 25 as soon as I receive those underlying documents, I will

09:38:46 1 certainly do some supplemental briefing on that. And I'll  
2 address this in the briefing but just -- until then, in  
3 response to the Government's argument, I think on the heels  
4 of a 404(b) analysis is always a 403 balancing as well.

09:39:04 5 And, certainly, under *Old Chief* and its progeny if we're  
6 standing there and representing to the Court that we're not  
7 contesting personal use, then I think that -- it does factor  
8 quite prominently into an *Old Chief* 403 analysis, which is  
9 part of the 404(b) analysis, but I will brief that.

09:39:23 10 Thank you.

11 THE COURT: I appreciate that. It's a question.  
12 Not a suggestion and certainly not a directive. Are you  
13 entertaining or would you be willing to stipulate to  
14 possession?

09:39:42 15 MR. SCOTT: We would certainly entertain that.  
16 And I take the Court's question in the spirit I think it's  
17 intended. It's just an inquiry, and it's certainly  
18 something I will discuss with Mr. Govey, but I certainly --  
19 I certainly wouldn't rule that out or put that outside the  
09:39:58 20 realm of possibility, particularly if that provides the  
21 Government more comfort and makes more clear that this isn't  
22 any kind of, you know, head fake, or bait and switch, that  
23 that really is absolutely our intention.

24 THE COURT: And I appreciate that. Because I  
09:40:12 25 don't know how much it impacts, but it certainly is relevant

09:40:16 1 to the 403 analysis here. If defense is stipulating to that  
2 element, then candidly I'm a little bit more nervous about  
3 using convictions that are more than 10 years old that have  
4 certainly some different facts and circumstances. They  
09:40:34 5 might be similar -- substantially similar; but if the  
6 defense is willing to do that, Mr. Marrett, then I'm having  
7 a harder time particularly why are we introducing the  
8 possession conviction, if you follow me.

9 MR. MARRETT: I understand, Your Honor.

09:40:54 10 I think it will turn, maybe, on the facts of the  
11 possession and conviction itself. But, certainly, the other  
12 convictions, because they are distribution contributions,  
13 could go to intent and knowledge and how -- and knowing how  
14 drugs are distributed and the amounts distributed and those  
09:41:10 15 types of things.

16 THE COURT: I'll keep an open mind. So I'll look  
17 forward to the briefing on that. Obviously, the sooner I  
18 get that, the better. We're almost in January now.

19 When do you reasonably think you can give me  
09:41:34 20 supplemental briefing on that?

21 MR. MARRETT: I think I could get that to you next  
22 week, Your Honor.

23 THE COURT: Okay. And Mr. Scott, once you have  
24 that, you'll be able to move pretty quickly, you think?

09:41:51 25 MR. SCOTT: Yes, Your Honor. I could respond in

09:41:52 1 48 hours either of the Government's briefing or 48 hours of  
2 their disclosure of the underlying facts to me.

3 THE COURT: That would be great.

4 Okay. So for the record, this motion is granted  
09:42:10 5 in part and then I'm going to reserve my decision on the  
6 drug convictions for a later date.

7 I think I've ruled on the other motions, and I'll  
8 stick with my tentatives on those.

9 When we were here last at the end, I indicated I  
09:42:31 10 need some revised pretrial filings. I need the joint  
11 statement of the case. I need the witness list, because I  
12 use that for jury selection. And then revised jury  
13 instructions and revised verdict form.

14 Mr. Marrett, when are you going to get me revised  
09:43:12 15 filings?

16 MR. MARRETT: May I confer with Mr. Scott for a  
17 moment?

18 THE COURT: Please do.

19 (Pause.)

09:43:36 20 MR. MARRETT: Your Honor, we could have you [sic]  
21 those by Tuesday.

22 THE COURT: Great. Next week. Okay. So you  
23 will -- if you get them to me by next Tuesday, that should  
24 be plenty of time. And do you think it would be necessary  
09:43:54 25 to schedule another pretrial conference, or do you -- sounds

09:43:59 1 like you both have plenty to do before the evidentiary  
2 hearing, so I don't want to needlessly waste anybody's time.  
3 If there are other issues that come up concerning the joint  
4 statements, the witness list, the verdict, or jury  
09:44:13 5 instructions, we can talk about that when we're here on the  
6 23rd.

7 MR. MARRETT: I think that would work fine,  
8 Your Honor. I don't expect there to be a lot of disputes  
9 between the parties. I know the Court has some issue that  
09:44:24 10 it wants to discuss with us, as far as the content of some  
11 of the instructions. But if the Court is comfortable with  
12 discussing that the 23rd, I think we would be prepared to do  
13 that then.

14 THE COURT: Okay. So that deals with that.

09:44:39 15 Mr. Scott, you've had many trials with me, so you  
16 know the logistics of the trial.

17 Mr. Marrett, you may know this, so I can go over  
18 it quickly; but either of you want me to slow down, I will  
19 do so.

09:44:56 20 But how jury selection will work is we will call  
21 14 people from the audience. We'll have a panel here on the  
22 30th. How many people, approximately, are we going to have  
23 here?

24 We'll have about 50 people. We'll call 14 to the  
09:45:16 25 box. Before they sit in the box, I will ask them whether

09:45:20 1 they want to be excused for economic hardship or medical  
2 necessity, which will be a difficult showing to make. Do we  
3 have any general sense of how long this trial is going to  
4 take? I know the Government thinks it can put on its case  
09:45:39 5 in just two days. Was that my understanding?

6 MR. MARRETT: I think two days is a reasonable  
7 estimate for the Government, Your Honor, obviously depending  
8 on the length and scope of cross-examination in particular  
9 of Deputy Larson. But I think two days, probably -- maybe  
09:45:58 10 three days, if cross-examination is extended.

11 THE COURT: All right. Mr. Scott, do you have any  
12 sense of what you think the estimate would be so I can just  
13 prepare the jurors?

14 MR. SCOTT: Yeah. This is a tougher than normal  
09:46:11 15 question to answer because of the Orange County thing. If  
16 we were to completely set that aside, I would say tack a day  
17 onto the Government's trial estimate. I'm somewhat at a  
18 loss because I don't yet know everything that I'll be  
19 receiving and for what extent I can -- we'll marshal that  
09:46:30 20 into a motive and bias case-in-chief. So I'm obviously at a  
21 little bit of a loss. I don't know if we should say,  
22 you know, a couple of days; you know, two, three more days  
23 to be conservative. You know, call it five court days  
24 total, or -- but it could be less than that.

09:46:47 25 THE COURT: All right. Why don't I just indicate

09:46:49 1 we think it's going go four to six days. Could be less, but  
2 that's what we're thinking. It makes me feel better,  
3 Mr. Scott, saying this: I know you. I've seen you. You're  
4 very efficient. And, obviously, even something is -- I  
09:47:14 5 don't want to say intense, but on this informant's scandal,  
6 I just don't see you wanting to put on the informant scandal  
7 and retrying that. You just want to make your points about  
8 motive/bias about Deputy Larson or the Orange County  
9 Sheriff's Department. And I think it's going to be -- am I  
09:47:40 10 missing it?

11 You don't want to be spending days doing that.  
12 You just want to make your points, and it's going to be  
13 pretty hard for the Government to rebut anything you're  
14 saying, because I imagine you're going to be using stuff or  
09:48:01 15 findings that -- or testimony was given in the informant  
16 scandal. I'm babbling a bit, and I don't mean to be  
17 babbling. But I just don't see you wanting to spend any  
18 more time than you need to, because you want to make a very  
19 powerful, short and precise presentation of this informant  
09:48:25 20 scandal as it relates to motive/bias or untruthfulness as a  
21 witness.

22 Am I missing it?

23 MR. SCOTT: No, I don't think so, Your Honor. I  
24 think almost always the right thing also happens to be the  
09:48:38 25 smart thing. And I think that wandering around for two

09:48:42 1 weeks is not going to do Mr. Govey any favors in front of  
2 the jury in terms of their attitude and their appreciation  
3 for what they're doing. I can just tell the Court that I  
4 think the things that are most germane to what we're trying  
09:48:53 5 to do are, if the percipient witnesses have pretty clearly,  
6 you know, perjured themselves or committed, you know,  
7 serious moral turpitude where it affects their credibility  
8 generally. I think whether that was in a Govey case or not  
9 a Govey case, I think that that's pretty important.

09:49:13 10 But beyond that in terms of, sort of, the  
11 motive/bias, our sort of case-in-chief, if you will, as  
12 opposed to simply impeaching witnesses, my thought on that,  
13 at least as I stand here right now and without having  
14 received the robust disclosure that I look forward to, I  
09:49:29 15 think there is a lot of these kinds of things that pertain  
16 to Mr. Govey, specifically, and these officers,  
17 specifically.

18 My plan would be to limit it to that, based on  
19 what I know so far. To the extent that I can build a case  
09:49:43 20 that, you know, they've been doing the Messiah violations,  
21 they've been trying to talk to him without attorneys,  
22 they've been misrepresenting things to the grand jury about  
23 Mr. Govey, then that is what I would try to put on.

24 THE COURT: And I hear you. And I think we're  
09:50:01 25 generally on the same page. Questions. Again, it's not

09:50:05 1 suggestions, arguments, or directives on my part. I'm just  
2 trying to get a sense of this issue and how it's going to  
3 play out. That's why I'm glad we're having the evidentiary  
4 hearing, because that will probably be helpful.

09:50:21 5 But as you sit here today, are you going to -- do  
6 you anticipate at least introducing him asserting his Fifth  
7 Amendment rights? Are you going to try to get that before  
8 the jury?

9 MR. SCOTT: I very well may. And I'll tell you  
09:50:40 10 why I say that, is because the impression I'm getting from  
11 the Government is that -- and maybe I'm wrong. But it feels  
12 like he may be kind of trying to sidestep. And by "he," I  
13 mean, Larson. I could anticipate something like, *Oh,*  
14 *well -- not in front of the jury him saying to this Court,*  
09:51:00 15 *Yeah, I invoked, but basically the lawyer told me to and,*  
16 *you know, that was kind of an abundance of caution thing.*  
17 *And I've got absolutely nothing to hide here.*

18 I think that puts him in a little bit of a fork, a  
19 little bit of a pickle, because I don't think you can just  
09:51:15 20 go around invoking unless you have a good faith basis  
21 that -- you know, the answers you were going to give could  
22 be incriminating. And so, I think he has to pick his  
23 poison. Either he really did have a good faith belief that,  
24 perhaps, what he was going to say was going to incriminate  
09:51:30 25 him; or he was saying that, but that wasn't true. And I

09:51:34 1 think either one has some -- certainly some probative value  
2 at least, so -- I hope I'm not babbling myself. It's a  
3 little bit longer answer, but the short answer is: Yes, I  
4 don't rule that out. I may try to get that in front of the  
09:51:48 5 jury.

6 THE COURT: And I don't have a negative reaction,  
7 Mr. Marrett. I'm not -- you might have a different view,  
8 but I've obviously been thinking through this in the past  
9 few days. And I anticipate that that's coming up in trial.

09:52:04 10 What I candidly -- and you can -- I certainly have an open  
11 mind -- and try to convince me otherwise. I don't see how  
12 any of the findings made by Judge Goethals would come in.  
13 That would be, basically, irrelevant opinion hearsay. But  
14 any testimony that was given that was relevant that you  
09:52:37 15 could connect with Deputy Larson, or the other deputy, or in  
16 the prosecution of this case, I would see that coming in.

17 MR. SCOTT: I'm inclined to agree, Your Honor. I  
18 think -- and I'm often on the opposite side of this when a  
19 judge has made some adverse credibility findings of a client  
09:53:01 20 of mine in an FCC proceeding or something like that, you  
21 know, I'd certainly complain to the high heavens that it's  
22 almost like super-vouching to have a judge's credibility  
23 findings and opinions put before the jury. So I think fair  
24 is fair. I don't see me trying to tell the jury what  
09:53:18 25 Judge Goethals said about these particular witnesses. I

09:53:21 1 think that's sort of the jury's job to decide and my job to  
2 prove up.

3 THE COURT: Mr. Marrett.

4 MR. MARRETT: I just want to step back for a  
09:53:30 5 moment to the invocation to the Fifth Amendment, reference  
6 to that in front of the jury. I think maybe the way we'll  
7 handle that is, I'll submit briefing on that, Your Honor. I  
8 think his invitation in a separate case to separate  
9 questions is not relevant. In particular, if he's asked  
09:53:47 10 those same questions here and doesn't invoke, the question  
11 of whether there's a good faith basis for the invocation,  
12 that was Judge King in the *Ortiz* case. That was a decision  
13 that he was making in that moment. I think there may be  
14 different circumstances and considerations at play here and  
09:54:08 15 different advice he's getting from different attorneys. So  
16 I don't think a prior invitation, it doesn't reflect  
17 culpability. It doesn't reflect anything. So I don't think  
18 it's relevant to his testimony here, but I can brief that  
19 for the Court and provide that to you.

09:54:26 20 THE COURT: Well, I won't make a final decision  
21 until after the hearing on the 23rd. But just as in the  
22 spirit of transparency, I see that testimony coming in. I  
23 think it is probative. And I just don't see how I should  
24 keep that out or why I should keep it out. But it sounds  
09:54:58 25 like we're on the same page. I don't think any findings

09:55:03 1 made by Judge Goethals see the light of day before this  
2 jury.

3           So then I guess it might not be that productive to  
4 try to script this out anymore. I think, Mr. Scott, you  
09:55:23 5 just need to give me a good sense and when we're here on the  
6 23rd, what you feel is really important to make your  
7 presentation. Obviously, any statements, prior statements  
8 that Deputy Larson has made, including invoking his  
9 Fifth Amendment rights, would seem to me to be relevant and  
09:55:41 10 appropriate. But if you're trying to get in other evidence  
11 of what's going on in the sheriff's department or the DA's  
12 office, then I have to understand why is that coming in and  
13 why is that relevant.

14           MR. SCOTT: I agree, Your Honor.

09:55:57 15           Certainly, the sooner I can get this disclosure  
16 from the Government, the sooner I can begin that process.  
17 And I understand it's been the holidays and it is what it  
18 is. I know just for starters -- and I've said this before  
19 on the record -- there's this -- the Frosio file, this  
09:56:16 20 particular informant named "Frosio," you know, if I can just  
21 get that sooner rather than later and then everything else,  
22 as soon as I can get it, I think that will go a long way to  
23 me building my case.

24           THE COURT: Right. And I'm still struggling with  
09:56:31 25 how he would assert his Fifth Amendment rights in a prior

09:56:36 1 criminal proceeding and now he's not going to. So I'll be  
2 interested to see what he actually does on the 23rd.

3 But, please, Mr. Marrett, get with Ms. Corrigan  
4 and give me a sense of how he's going to go forward.

09:56:57 5 MR. MARRETT: I will make sure to do that,  
6 Your Honor.

7 THE COURT: Okay. How did we get off on this,  
8 again?

9 Oh, we were talking about the length of the trial.  
09:57:10 10 That's how. That's how.

11 Okay. So we'll call the 14 people to the box.  
12 Once they're in the box, I will ask them some basic  
13 questions. First, I'll introduce the Government. I'll  
14 introduce the defense. I'll identify the witnesses. That's  
09:57:37 15 why, Mr. Marrett, I need that witness list.

16 And, Mr. Scott, if there's any witnesses that you  
17 feel comfortable putting on there, I would appreciate it.

18 Then, I'll talk about the three fundamental  
19 principles of our criminal justice system: The presumption  
09:57:53 20 of innocence, the burden of proof on the Government to prove  
21 the defendant guilty beyond a reasonable doubt and the  
22 defendant's right to remain silent and not say anything at  
23 the trial or to present any evidence.

24 These are little bit sensitive issues, but I  
09:58:08 25 thought they'd be appropriate to inquire, unless counsel

09:58:14 1 have problems and would like me not to address them, but if  
2 jurors have strong views about our drug laws; and then, even  
3 more sensitive: Has any juror or immediate family member  
4 ever been addicted to or had a similar problem with drugs or  
09:58:32 5 alcohol?

6 If they have, then this might not be the  
7 appropriate case for them sit on.

8 Has any of the jurors been a victim of a crime?  
9 Then, talk about law enforcement witnesses and how important  
09:58:50 10 it is to evaluate their credibility like any other witness.  
11 Just because someone's from law enforcement doesn't mean  
12 that the juror should take whatever that law enforcement  
13 witness says as the truth or accurate.

14 Then I was just going to go into some general  
09:59:14 15 background information about each juror, their city of  
16 residence, their marital status, their occupation, their  
17 employer, prior juror service and their favorite movie or  
18 book.

19 After that, then I would turn it over to the  
09:59:29 20 lawyers. And, Mr. Marrett, I'll give you about 10 or 15  
21 minutes to ask the 14 people in the box any questions you  
22 might have. Then, Mr. Scott, same for you, sir. And then  
23 after you've asked any questions you have, then we'll take  
24 any challenges for cause. Assuming we remove people for  
09:59:48 25 cause, we'll bring one or more people up to replace any of

09:59:54 1 the 14 that have been removed. And then, I'll ask a few  
2 minutes of questions and then I'll give each side a few  
3 minutes to ask just the new people to the box questions.

4 After that process is completed and we have a jury  
10:00:10 5 that we think can be fair and impartial, we'll go to the  
6 peremptory challenges phase of the trial. The Government  
7 has seven peremptory challenges and the defense has 11. And  
8 what I try to do is do rounds. But if either side reserves  
9 a peremptory in any given round, then we'll have an eighth  
10:00:39 10 round. But my hope is to complete juror selection in eight  
11 rounds.

12 In the first round, the Government would have one  
13 peremptory; the defense would have one. The second round,  
14 the Government would have one peremptory; the defense would  
10:00:55 15 have two. The third round, the Government has one; defense  
16 has two. Fourth round, Government has one and the defense  
17 has two. Fifth round, Government has one; the defense has  
18 two. The sixth round, the Government has one; defense has  
19 one. And then, the seventh round, the Government has one;  
10:01:14 20 defense has one. Again, if there are any peremptories that  
21 have been reserved, then we'll have an eighth round. And I  
22 would want, assuming we don't have a lot of peremptories in  
23 reserve, for those peremptories to be exercised in the  
24 eighth round.

10:01:37 25 If the defense only exercised one peremptory in a

10:01:48 1 round where they have two and then the Government passes on  
2 the next round, you know, my intent is that we don't pick  
3 the jury. We would only -- the jury wouldn't be selected.

4 In other words, the Government passes. Defense --  
10:02:17 5 and we're in a round where you have two peremptories,  
6 Mr. Scott. And you say, *We'd like to thank and excuse*  
7 *Mr. Smith*, then we'll replace Mr. -- and then I'd say -- I  
8 guess what we would do is -- I'm sorry, I want to be clear.

9 You have two peremptories and you say, *We'd just*  
10:02:49 10 *like to thank and excuse Mr. Smith*, but you don't exercise  
11 the other one. We get rid of Mr. Smith. We bring in that  
12 person. Then, the Government -- we'd go to the next round.  
13 The Government passes. We still haven't picked the jury.  
14 You still have your remaining peremptories, plus one in  
10:03:13 15 reserve. We wouldn't pick the jury unless the Government  
16 pass and then you pass, if you follow me.

17 MR. SCOTT: I do, Your Honor.

18 MR. MARRETT: I do.

19 THE COURT: Okay. During trial, no speaking  
10:03:33 20 objections. If you have an objection to any question that's  
21 asked, just state the objection -- hearsay, argumentative --  
22 but doesn't start arguing or giving a narrative in front of  
23 the jury. That's not fair. I really do not like sidebars  
24 when we have the jury here. Their time is precious to me.  
10:03:53 25 And if we have any legal issues we need to discuss, we can

10:03:56 1 do that at the end of the day and I'm perfectly willing to  
2 stay as late as necessary to discuss any issue. So, please,  
3 don't ask for a sidebar unless it's an issue that you think  
4 is so fundamental that a mistrial will result.

10:04:13 5 I follow the two examination rule: Direct, cross,  
6 redirect, recross. That's it. Don't ask me, *Just one more*  
7 *question*. No. You just have two opportunities to ask a  
8 witness any question. But with that, I'm very lenient, and  
9 I'm not very receptive to beyond the scope of direct, beyond  
10:04:42 10 the scope of recross. That's usually a loser with me.

11 Hours of operation. We'll hopefully start  
12 promptly every day at 8:30, after the first day. Usually  
13 we're starting a little bit late, because by the time  
14 orientation is completed or concluded downstairs, they're  
10:05:05 15 not here until after 9:00 o'clock, but we'll see if we can  
16 get them here early. But once the jury is impaneled, I will  
17 expect all the jurors to be here seated ready to go at 8:30.

18 We'll take a morning break of 15, 20 minutes.  
19 Take a lunch break of, approximately, an hour. We'll take  
10:05:28 20 an afternoon break and then we'll finish between 4:00 and  
21 5:00, depending on how things are going.

22 Movement in the courtroom is fine. But I know the  
23 court reporter much prefers -- and I do as well -- that  
24 if -- when you're asking a witness any question, if you are  
10:05:54 25 close to that lectern and the microphone, that will add --

10:06:00 1 can't be moving around here. Also, I don't like asking  
2 questions right next to the witness box. But if you have to  
3 show a witness a document or you want to orientate a  
4 witness, I don't have a problem with that. But, generally,  
10:06:13 5 please ask your questions of the witness from the lectern.

6 Those are basically the rules.

7 Mr. Marrett, do you have any questions about them?

8 MR. MARRETT: No questions, Your Honor.

9 THE COURT: Mr. Scott, I assume you have none.

10:06:29 10 MR. SCOTT: No thank you, Your Honor.

11 THE COURT: All right. Well, I don't have  
12 anything further I wanted to discuss with you.

13 Just to summarize then: Mr. Marrett, you're going  
14 to get me the revised joint statement, the witness list, the  
10:06:44 15 verdict form, the jury instructions sometime next week.

16 You're also going to get with Mr. Scott and just  
17 give me a joint report status sometime by the end of next  
18 week, right? Is it next week -- no, or is it the following  
19 week, the following week on Deputy Larson, after you have  
10:07:10 20 spoken to Ms. Corrigan? So by January 12th, you'll have --  
21 give me an updated report. And then you're also going to --

22 I'm going to have complete briefing on the issue  
23 of the prior drug convictions. All the briefing will be in  
24 by the 12th. I think you and -- indicated, Mr. Marrett,  
10:07:39 25 you'll get something to me next week and then, Mr. Scott,

10:07:42 1 you said you just needed 48 hours.

2 MR. SCOTT: Yes, Your Honor.

3 THE COURT: I don't have anything else.

4 Anything else from the Government?

10:07:52 5 MR. MARRETT: Nothing further. Thank you,  
6 Your Honor.

7 MR. SCOTT: No thank you.

8 THE COURT: All right. Fine. Thank you.

9 THE CLERK: All rise.

10:07:59 10 *(At 10:08 a.m., proceedings were adjourned.)*

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## 10:07:59 1 CERTIFICATE

2 I hereby certify that pursuant to Section 753,  
3 Title 28, United States Code, the foregoing is a true and  
4 correct transcript of the stenographically reported  
10:07:59 5 proceedings held in the above-entitled matter and that the  
6 transcript page format is in conformance with the  
7 regulations of the Judicial Conference of the United States.

8  
9 Date: March 2, 2018

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12 /s/DEBORAH D. PARKER  
13 DEBORAH D. PARKER, OFFICIAL REPORTER  
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DEBORAH D. PARKER, U.S. COURT REPORTER